IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.34 of 2000

Decided on : March 28, 2007

State of Himachal Pradesh **…..Appellant.**

VERSUS

Kamal Sarup **…..Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : **Mr. Ashok Chaudhary, Additional Advocate General.**

For the Respondent : **Mr. Ajay Sharma, Advocate.**

Surjit Singh, Judge (Oral)

Respondent was sent up for trial for offences, punishable under Sections 279 and 337 IPC, for allegedly driving a scooter in a rash or negligent manner and while so driving causing injuries to a child, aged about 4 or 5 years.

2. Prosecution version may be summed up thus. PW-1 Mast Ram after having travelled by a bus alighted from the bus near Rakkar Colony, Una. He was holding his son, Yash Pal then aged about 5 years, in his lap. After alighting from the bus, when he was crossing the road, the respondent came from one of side of the road driving his scooter at a very fast speed and also in a rash manner. The scooter hit the child, as a result of which he fell and sustained simple injuries.

3. After trial, the Judicial Magistrate came to the conclusion that PW-1 Mast Ram and the child, while crossing the road, fell of their own without having been hit by the scooter, per testimony of the child

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Whether the reporters of the local papers may be allowed to see the Judgment?

examined as PW-3 Yash Pal. Consequently, the trial Court acquitted the respondent.

4. I have heard the learned Additional Advocate General, as also the learned defence counsel, and gone through the record.

5. The child was only five years of age when the accident took place. The accident had taken place in the year 1995. The child was examined as a witness in the year 1998 when his age was only seven. In the examination-in-chief, the child stated that he fell when he was hit by the scooter. However, in the cross-examination, he stated that when crossing the road he and his father had fallen. Relying upon this part of the statement of the child in the cross-examination the trial Court has observed that the father and the child fell without having been hit by the scooter. The view taken by the trial Court is perverse. The father very categorically stated that the scooter hit the child, as a result of which he fell. The child has nowhere stated that he and his father fell of their own, though he does say that they fell while crossing the road. May be what the child intended to say that they fell while crossing the road on being hit by the scooter. It appears that the child was cross-examined very shrewdly to avoid getting specific and definite answer from him as to the cause of fall while crossing the road. In any case, the child was only 4 or 5 years of age when the accident took place and he could not be expected to know, even at the time of the occurrence of the accident as to what was the exact cause of his fall and injuries, what to speak of his remembering the details after three years. Therefore, the trial Court was not right in acquitting the respondent on the basis of the aforesaid statement of the child made in the course of cross-examination.

6. As a result of the above discussion, appeal is accepted. Judgment of the trial Court acquitting the respondent is set aside. However, looking to the fact that the accident had taken place 12 years back and the child sustained only a minor injury, I feel that the ends of justice would be met in case the respondent is let off with sentence of fine only. Accordingly, it is ordered that the respondent shall pay fine of Rs.500/- in respect of offence under Section 279 IPC and Rs.500/- in respect of the offence under Section 337 IPC. In case of non-payment of fine he shall undergo simple imprisonment for one month. One month time is given to the respondent for depositing the fine.

March 282007(sd) **(Surjit Singh), J.**